



SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2015-0038]

Social Security Ruling, SSR 16-2p

TITLES II AND XVI: EVALUATION OF CLAIMS INVOLVING SIMILAR FAULT IN THE PROVIDING OF EVIDENCE

AGENCY: Social Security Administration

ACTION: Notice of Social Security Ruling (SSR)

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of SSR 16-2p. This Ruling supersedes and replaces previously published SSR 00-2p. It provides the definition of fraud, and clarifies the definitions of knowingly and preponderance of the evidence. The Ruling also clarifies that we may find that any individual or entity has committed fraud or similar fault, and that we may disregard evidence submitted by any individual or entity that we find has committed fraud or similar fault. In addition, the Ruling provides examples of such individuals and entities.

DATES: Effective Date [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Director of Office of Vocational Evaluation and Process Policy in the Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 597-1632 or TTY 410-966-5609, for information about this notice. For information on eligibility or filing for benefits, call our

national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this SSR in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we convey to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are binding as precedents in adjudicating cases.

This SSR will remain in effect until we publish a notice in the Federal Register that rescinds it, or we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Dated: March 7, 2016.

Carolyn W. Colvin,
Acting Commissioner of Social Security.

POLICY INTERPRETATION RULING

Social Security Ruling, SSR 16-2p:

TITLES II AND XVI: EVALUATION OF CLAIMS INVOLVING THE ISSUE OF SIMILAR FAULT IN THE PROVIDING OF EVIDENCE

This SSR rescinds and replaces SSR 00-2p: “TITLES II AND XVI: EVALUATION OF CLAIMS INVOLVING THE ISSUE OF “SIMILAR FAULT” IN THE PROVIDING OF EVIDENCE.”

PURPOSE: To explain the rules that govern the evaluation and adjudication of claims when there is reason to believe similar fault was involved in the providing of evidence in support of the claim.

CITATIONS: Sections 205(u) and 1631(e)(7) of the Social Security Act, 42 U.S.C. 405(u), 1383(e)(7), as amended; 20 CFR 404.704, 404.708, 404.1512, 404.1520, 416.912, 416.920, 416.924, and 422.130(b).

INTRODUCTION:

The Social Security Independence and Program Improvements Act of 1994, Public Law 103-296, amended the Social Security Act (Act) to add provisions addressing fraud or similar fault. These amendments to sections 205 and 1631 of the Act provide that we must immediately redetermine an individual's entitlement to monthly insurance benefits under title II or eligibility for benefits under title XVI if there is reason to believe that fraud or similar fault was involved in the individual's application for such benefits. This statute further provides that, when we redetermine entitlement or eligibility, or when we make an initial determination of entitlement or eligibility, we "shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence." If, after redetermining entitlement to or eligibility for benefits, we determine that without the disregarded evidence, the evidence does not support entitlement or eligibility, we may terminate such entitlement or eligibility and may treat benefits paid based on such evidence as overpayments.

This Ruling sets forth the standards we and State agency adjudicators will apply at all levels of the administrative review process in determining whether there is reason to believe that similar fault was involved in providing evidence in connection with a claim for benefits. It also provides guidance for the evaluation of such claims when there is reason to believe that similar fault was involved. It applies to all claims for benefits under title II and title XVI of the Act; e.g., claims for old-age and survivors benefits and disability benefits under title II of the Act, and claims for Supplemental Security Income benefits for the aged, blind, and disabled under title XVI of the Act.

This Ruling does not replace or limit other appropriate standards and criteria for development and evaluation of claims. There may be instances in which evidence will not be disregarded under the statutory provisions discussed in this Ruling, but nevertheless, factors may exist that justify giving the evidence in question less credence than other evidence.

POLICY INTERPRETATION:

A. General

1. Sections 205(u) and 1631(e)(7) of the Act provide that we must disregard evidence if there is reason to believe that fraud or similar fault was involved in the providing of that evidence. These sections explain that similar fault is involved if: "(A) an incorrect or incomplete statement that is material to the determination is knowingly made; or (B) information that is material to the determination is knowingly concealed."
2. We may find that any individual or entity whose actions affect an individual's application for monthly benefits, has committed fraud or similar fault. We may disregard evidence based on similar fault of a claimant, a recipient of benefits, or any other individual or entity connected with the claim. Examples of any individual or entity include a claimant, beneficiary, auxiliary, recipient, spouse, representative, medical source, translator, interpreter, and representative payee. Sections 205(u) or 1631(e)(7) of the Act do not

require that the individual or entity who committed fraud or similar fault, or the individual or entity providing the evidence that involves fraud or similar fault, have a direct relationship to or act on behalf of the claimant, beneficiary, or recipient, or directly or indirectly benefit from the fraud or similar fault.

3. A finding of similar fault can be made only if there is reason to believe that, based on a preponderance of the evidence, the person committing the fault knew that the evidence provided was false or incomplete. We cannot base a finding of similar fault on speculation or suspicion.
4. A finding of similar fault is sufficient to take the administrative actions described in this Ruling. Although a finding of "fraud" made as part of a criminal prosecution can serve as a basis for the administrative actions described below, such a finding is not required.
5. A finding of similar fault concerning a material fact may constitute evidence to be considered in determining whether there is reason to believe that similar fault was involved with respect to other evidence provided by the same source, and may justify disregarding other evidence from that source. Also, the evidence relied on to make a finding of similar fault in one claim may be considered in deciding whether there is similar fault in another claim or in deciding whether to give less weight to evidence in another claim.

6. A finding of similar fault does not constitute complete adjudicative action in any claim. A person may still be found entitled to, or eligible for, monthly benefits despite the fact that some evidence in the case record has been disregarded based on similar fault.

B. Definitions

1. Fraud. Fraud exists when a person, with the intent to defraud, either makes or causes to be made, a false statement or misrepresentation of a material fact for use in determining rights under the Social Security Act; or conceals or fails to disclose a material fact for use in determining rights under the Social Security Act.
2. Similar Fault. As defined in section 205(u)(2) and 1631(e)(7)(B) of the Act, similar fault is involved with respect to a determination if: "(A) an incorrect or incomplete statement that is material to the determination is knowingly made; or (B) information that is material to the determination is knowingly concealed."
3. Material. This term describes a statement or information, or an omission from a statement or information that could influence us in determining entitlement to benefits under title II or eligibility for benefits under title XVI of the Act.

4. Knowingly. This term describes a person's awareness or understanding regarding the correctness or completeness of the information he or she provides us, or the materiality of the information he or she conceals from us.

5. Preponderance of Evidence. This term means such relevant evidence that as a whole shows that the existence of a fact to be proven is more likely than not. Preponderance is established by that piece or body of evidence that, when considered, produces the stronger impression and is more convincing as to its truth when weighed against the evidence in opposition. Thus, preponderance does not require that a certain number of pieces of evidence (e.g., five or six) must be present. It is possible that just one piece of evidence may be so convincing that it outweighs more than one piece of evidence in opposition.

C. Development and Evaluation

Adjudicators at all levels of the administrative review process are responsible for taking all appropriate steps to resolve similar fault issues in accordance with the standards in this Ruling. Adjudicators must adhere to existing due process and confidentiality requirements during the process of resolving similar fault issues.

In making determinations about whether there is similar fault, all adjudicators must:

1. Consider all evidence in the case record before determining whether specific evidence may be disregarded.
2. Apply the preponderance of evidence standard, as defined in this Ruling.
3. Fully document the record with the evidence that was the basis for the finding that, based on a preponderance of the evidence, there is reason to believe that similar fault was involved in providing the evidence that is being disregarded.

D. Notice of Determination or Decision

In determinations or decisions that involve a finding of similar fault and disregarding evidence, the notice of determination or decision must:

1. Explain the applicable provision of the Act that allows the adjudicator to disregard particular evidence due to a similar fault finding.
2. Identify the documents or other evidence that is being disregarded.

3. Provide a discussion of the evidence that supports a finding to disregard evidence. The discussion must explain that, in accordance with the law, the evidence identified cannot be used as evidence in the claim because, after considering all the information in the case record, the adjudicator has reason to believe that similar fault was involved in providing the evidence and it must be disregarded. Again, a similar fault finding can be made only if there is reason to believe, based on a preponderance of the evidence, the person knew that the evidence provided was false or incomplete. A similar fault finding cannot be based on speculation or suspicion.

4. Provide a determination or decision based on an evaluation of the remaining evidence in accordance with other rules and procedures. A similar fault finding does not constitute complete adjudicative action in any claim. A person may still be found entitled to, or eligible for, monthly benefits despite the fact that some evidence in the case record has been disregarded based on similar fault. For example, a person may be found to be under a disability based on impairments that are established by evidence that is not disregarded because of similar fault.

5. Include standard appeal language.

EFFECTIVE DATE: This SSR is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

CROSS-REFERENCES: [SSR 85-23](#), "Title XVI: Reopening Supplemental Security Income Determinations at Any Time for Similar Fault."

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